

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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|---------------------------|---|----------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:92CR14 |
| |) | |
| v. |) | |
| |) | |
| ERROL SKEETE, |) | ORDER |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court on defendant's motion to reduce sentence and request for evidentiary hearing (Filing No. 1117). The Court has reviewed defendant's motion, along with the brief filed in support of his motion (Filing No. 1118). Under the guidelines for crack cocaine, as modified on November 1, 2007, and made retroactive, the defendant is not entitled to any reduction of his sentence. His original sentence, applying the guidelines in effect on October 15, 1988, provided for a base offense level of 36 on the basis that the quantity of cocaine base attributed to defendant approximated 47 kilograms. As a manager or supervisor of the conspiracy, his offense level was increased three levels, resulting in an adjusted offense level of 39, and a total offense level of 39. This, together with a criminal history category of VI, called for a sentence of 360 months to life. Pursuant to the present modifications to the sentencing guidelines as it relates to crack cocaine, his base offense level for 47 kilograms of crack cocaine would be 38,

rather than the 36 that was used in 1993 when he was sentenced. It is clear from a consideration of the modification to the guidelines that the defendant receives no benefits from the changes made effective November 1, 2007. He is not entitled to a reduction of his sentence based upon the guidelines.

The United States Sentencing Guidelines § 1B1.10(a) provides that if none of the amendments listed in § 1B1.10(c) is applicable, a reduction in defendant's term of imprisonment is not authorized. None of the amendments referenced in Subsection (c) apply.

The defendant relies heavily upon the decision of the Ninth Circuit in *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007), but it does not avail the defendant in this case as he is not entitled to a resentencing under the November 1, 2007, modifications to the guidelines as they relate to crack cocaine. For these reasons, the Court finds that the motion of the defendant to reduce sentence should be denied. Accordingly,

IT IS ORDERED that defendant's motion to reduce sentence and request for evidentiary hearing is denied.

DATED this 29th day of December, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court